

REMARKS

Claims 1-39 are pending in the application. The Examiner has rejected claims 2-8, 10, 16-22, 24, 30-36 and 38, and 25-31 under 35 USC § 112, 2nd paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Examiner has also rejected claims 1-39 under 35 USC § 102(e) as being anticipated by US Patent No. 5,951,639 to MacInnis. The Examiner has also rejected claim 1 under 35 USC § 102(e) as being anticipated by US Patent No. 6,453,470 to Gazda et al. Reconsideration is respectfully requested in view of the following remarks.

The 35 USC § 112 Rejections

The Examiner has rejected claims 2-8, 10, 16-22, 24, 30-36 and 38, and 25-31 under 35 USC § 112, 2nd paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Applicant has amended claims 2-4, 7-11, 16-18, 21-25, 30-32, and 35-39 to overcome this rejection. In particular the Applicant has clarified that the units are remote units or a plurality of remote units where there is precedent for these clarifications. In addition, the Applicant has clarified that the paths are data paths where there is precedent for these clarifications. Applicant respectfully contends these amendments traverse the 112 rejections.

The Invention

The recited invention includes an improved code delivery method and apparatus. In particular in the invention remote units have several data paths that receive information. For example in an embodiment where the remote units are set top boxes, each set top box may have three data paths capable of receiving information: 1) a cable modem interface channel or path; 2) an out of band ("OOB") channel or path; and 3) an in band channel or path. In operation each of these data channels or paths may have a different average data loss and data rate or bandwidth. When large, non-critical code is to be transmitted to a remote unit, the unit's data path having the largest data rate or bandwidth may be selected. When critical data, such as read only memory flash data is to be transmitted, the unit's data path having the lowest average data loss may be selected. Accordingly, the present invention may select a particular one of a remote units receive data paths based on the code to be transmitted and then transmit the code on the unit's selected receive data path.

The 5951639 Patent to MacInnis:

The '639 patent is directed to a system and method of providing different versions of a program to be downloaded to a hardware platform where each version requires different hardware configurations to operate upon installation and execution. For example, the Random Access Memory available in a hardware platform may be critical for program execution. The '639 patent may transmit multiple versions of a program where each version may require a different minimum RAM to execute properly. Each transmitted program version may include a descriptor that details the hardware platform requirements necessary to install and execute the associated program. The '639 patent details that "compatibility" requirements may include operating system version, memory capacity, and audio card type, among others. The '639 patent also notes that the

programs (modules) may be continuously transmitted on a channel (OOB or in band). The '639 patent does not teach that a particular channel is selected as a function of the module, code, or program to be transmitted.

The 6453470 Patent to Gazda et al.

The '470 patent teaches a system that provides a multiple hardware compatible software component to set-top boxes. When the set-top box executes this software component, the component determines the set-top box hardware configuration and then installs the appropriate software object – the '470 patent calls this selection step “selecting a software path”. The '470 patent does not mention the process of actually transmitting the software component to a set-top box.

The Prior Art Rejections

The Examiner has also rejected claims 1-39 under 35 USC § 102(e) as being anticipated by US Patent No. 5,951,639 to MacInnis. The Examiner has also rejected claim 1 under 35 USC § 102(e) as being anticipated by US Patent No. 6,453,470 to Gazda et al. Reconsideration is respectfully requested in view of the following remarks

Claim 1:

Claim 1, as amended recites:

A method of downloading code to at least one remote unit on a network having a plurality of remote units wherein each remote unit has a plurality of data paths that can receive code, comprising the steps of:

- a) selecting one of the plurality of data paths based on the code to be transmitted; and
- b) transmitting the code to the at least one remote unit on the selected data path.

As noted the '639 patent does not teach that a particular channel is selected as a function of the module, code, or program to be transmitted. In addition, the '470 patent does not mention the process of actually transmitting the software component to a set-top box and thus does not teach, suggest, or mutative one skilled in the art to practice the invention recited in claim 1. In view of these critical differences in teachings (or lack thereof), Applicant respectfully contends that neither the '639 patent nor the '470 patent, alone or in combination anticipate or make the invention recited by claim 1 obvious. Accordingly, Applicant respectfully contends that claim 1 is allowable over these references.

Claims 2-14:

Claims 2-14 are directly or indirectly dependent on claim 1. Applicant respectfully contends that these claims are also allowable over the references for the reasons recited for claim 1.

Claim 15:

Claim 15 is similar to claim 1 where claim 15 recites an article of manufacture for performing the method recited by claim 1. Applicant respectfully contends that this claim is also allowable over the references for the reasons recited for claim 1.

Claims 16-28:

Claims 16-28 are directly or indirectly dependent on claim 15. Applicant respectfully contends that these claims are also allowable over the references for the reasons recited for claim 1.

Claim 29:

Claim 29 is similar to claim 1 where claim 29 includes apparatus for performing the method recited by claim 1. Applicant respectfully contends that this claim is also allowable over the references for the reasons recited for claim 1.

Claims 30-39:

Claims 30-39 are directly or indirectly dependent on claim 29. Applicant respectfully contends that these claims are also allowable over the references for the reasons recited for claim 1.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Merle Richman, Applicants' Attorney at 858 320-2030. For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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Date



Merle Richman
Attorney/Agent for Applicant(s)
Reg. No. 38282

Merle Richman
Patent Attorney
PO Box 3333
La Jolla, CA 92038-3333
Tel. 858 320-2030